

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

Council for Medicare Choice, *et al.*,

Plaintiffs,

v.

United States Department of Health and Human Services, *et al.*,

Defendants.

Civil Action No. 4:24-cv-446-O

**Hearing Requested**

**Plaintiffs' Opposition to Defendants' Motion For Summary Judgment**

This Court should deny Defendants' motion for summary judgment, ECF 53, and grant judgment in Plaintiffs' favor, ECF 50. Each of the matters required by Local Rule 56.4 are set forth in Plaintiffs' accompanying consolidated reply brief in support of their motion for summary judgment and in opposition to Defendants' motion for summary judgment.

As more fully explained in the accompanying brief and Plaintiffs' brief in support of their summary judgment motion, ECF 51, Plaintiffs are entitled to judgment on each of their claims that the challenged provisions of the Compensation Rule—the Fixed Fee and Contract-Terms Restriction, 89 Fed. Reg. 30,448 (Apr. 23, 2024) (amending 42 C.F.R. §§ 422.2274(a), (c), (d), (e) and 423.2274(a), (c), (d), (e))—violate the Administrative Procedure Act because the Rule: exceeds Defendants' statutory authority; violated notice-and-comment requirements; and is arbitrary and capricious. *See* 5 U.S.C. § 706. The elements of those claims are set forth in Plaintiffs' aforementioned briefs, which also explain that Plaintiffs' claims raise purely legal issues for which there are no material disputes of fact. This Court should therefore grant Plaintiffs' motion for summary

judgment, deny the Defendants' motion for summary judgment, enter judgment for Plaintiffs, and vacate the challenged provision of the Rule on a nationwide basis.

Dated: December 20, 2024

Respectfully submitted,

/s/ Allyson N. Ho

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 20, 2024, I caused the foregoing document to be filed with the Clerk for the U.S. District Court for the Northern District of Texas through the ECF system. Participants in the case who are registered ECF users will be served through the ECF system, as identified by the Notice of Electronic Filing.

Dated: December 20, 2024

Respectfully submitted,

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